

Service Date: June 1, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF a Tariff Filing)	UTILITY DIVISION
By Ronan Telephone Company Containing the)	
Rates, Terms and Conditions for Reciprocal)	DOCKET NO. D2000.1.14
Compensation Pursuant to 47 U.S.C. § 251(b)(5))	
and § 69-3-834(2)(b), MCA)	ORDER NO. 6225d

ORDER ON MOTION FOR INTERIM
"BILL & KEEP" RECIPROCAL COMPENSATION

Introduction and Background

This docket was initiated by Order No. 6225, Order Directing Tariff Filing. Order No. 6225 directed Ronan Telephone Company (RTC) to "file a tariff, providing the details of a reciprocal compensation arrangement that will be available to interconnecting carriers desiring such an arrangement." P. 1. RTC duly filed a tariff on February 8, 2000, and that tariff is presently the subject of a contested case proceeding in this docket pursuant to Procedural Order 6225a.

On February 18, 2000 Montana Wireless, Inc. (MWI), an intervenor in this docket, and a company desiring to enter into a reciprocal compensation arrangement with RTC, filed a motion that RTC be immediately required to "provide reciprocal compensation arrangements between MWI and Ronan Telephone Company on a 'bill-and-keep' basis while RTC's reciprocal compensation tariff is pending approval." MWI motion, p. 1. RTC filed a "reply brief" opposing the MWI motion; MWI filed "reply comments" responding to the RTC "reply brief" and RTC filed a "supplemental reply brief."

Discussion and Decision

"Reciprocal compensation" refers to an arrangement between two carriers "in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier." 47 C.F.R. § 51.701(e). The Montana Public Service Commission (Commission) is the proper forum to establish the rates RTC will charge for the

transport and termination of local telecommunications traffic. 47 C.F.R. § 51.705. "Bill-and-keep" refers to a reciprocal compensation arrangement where "neither of the two interconnecting carriers charges the other for the termination of local telecommunications traffic that originates on the other carrier's network." 47 C.F.R. § 51.713(a).

MWI argues that the Commission has the discretion to order bill-and-keep on an interim basis pending approval of a RTC reciprocal compensation tariff. MWI asserts that the Commission should order bill-and-keep because of the "continual delay" in establishing permanent reciprocal compensation arrangements. In support of the Commission's discretion to order bill-and-keep MWI cites to 47 C.F.R. § 51.705 (reciprocal compensation rates can be established on the basis of a bill-and-keep arrangement) and 47 C.F.R. § 51.713 (a state commission can presume, until rebutted, a roughly balanced flow of local telecommunications traffic between networks).

RTC contends that interim bill-and-keep would be "totally inappropriate in this case, and contrary to federal law, FCC rules, and the constitutional 'taking' provision of the Fifth Amendment." RTC reply brief, p.2. In support RTC makes several arguments.

First, RTC claims the Commission has denied "this same motion in Docket No. D99.4.112 and D99.4.113." Id. This is not accurate. In Docket Nos. D99.4.112 and D99.4.113 a motion for the establishment of bill-and-keep reciprocal compensation was filed; however 1) the motion was not for interim bill-and-keep, and 2) the Commission denied the motion as moot because it dismissed the arbitration proceedings in which the motion was filed. The Commission did not reach the merits of bill-and-keep, whether interim or otherwise. Order Nos. 6218a and 6219a, Docket Nos. D99.4.112 and D99.4.113.

Second, RTC appears to argue that any bill-and-keep arrangement constitutes an unconstitutional taking. RTC reply brief, p. 2, ll. 5-14. Bill-and-keep arrangements are contemplated under federal law and the Commission will not conclude they are unconstitutional based on the assertions and authority provided by RTC. Further, RTC's constitutional argument appears to presume a permanent bill-and-keep arrangement in the face of out-of-balance traffic flows between companies. However, MWI's motion is for interim bill-and-keep and acknowledges the legitimacy of a "true-up" mechanism to account for any imbalances over the interim period. Reply comments of MWI, p. 2.

Third, RTC contends that bill-and-keep would violate 47 U.S.C. § 252(d)(2)(A) which requires that reciprocal compensation recover costs associated with transport and termination of local calls and be based on a "reasonable approximation of the additional costs of terminating such calls." *Id.* RTC acknowledges that federal law contemplates bill-and-keep arrangements, but insists that bill-and-keep "must not conflict with the constitutional 'taking' prohibition, must be cost compensatory, must be based on specific evidence in the record, and must be consistent with the other implementing [Federal Communications Commission (FCC)] rules." RTC reply brief, p. 2.

It is correct that 47 U.S.C. § 252(d)(2)(A) places certain limitations on a bill-and-keep arrangement, but it does not preclude such an arrangement. The Commission finds that interim bill-and-keep, with a true-up, would satisfy compensation concerns. Further, it is not true that bill-and-keep cannot be imposed absent "specific evidence in the record." By rule on bill-and-keep arrangements for reciprocal compensation the FCC says that, "[n]othing . . . precludes a state commission from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption." 47 C.F.R. § 51.713(c). This means that the Commission can presume a rough traffic balance, and RTC is free to attempt to rebut the presumption at hearing. Moreover, a true-up mechanism will allow RTC to be made whole should the presumption prove incorrect.

Fourth, RTC avers that interim bill-and-keep would have adverse impacts on universal service because "'bill-and-keep' would result in RTC receiving no compensation for the use of its network." RTC reply brief, p. 2. As RTC knows, the Commission is not persuaded that requiring RTC to enter into reciprocal compensation arrangements will inevitably result in an adverse impact on universal service. See Order No. 6174c, Docket No. D99.4.111. Further, to say that bill-and-keep would result in RTC receiving no compensation reflects a fundamental misunderstanding of bill-and-keep. The only way RTC could receive no compensation would be in the extremely unlikely event that RTC customers did not transport or terminate any calls on the network of the interconnecting carrier. In addition, even if RTC's universal service concerns have merit, a true-up mechanism should alleviate those concerns.

Fifth, RTC claims that 47 C.F.R. § 51.715 (interim transport and termination pricing) cannot be read to support interim bill-and-keep because that rule addresses an interim arrangement only in the context of negotiation or arbitration, and the Commission has ruled that RTC is exempt from the negotiation and arbitration process. RTC reply brief, p. 5; Commission Order Nos. 6218a and 6219a, Docket Nos. D99.4.112 and D99.4.113. RTC is correct that 47 C.F.R. § 51.715 is not directly applicable to MWI's motion. However, that rule does provide for interim relief in a context analogous to this, and for that reason it is relevant to the Commission's consideration of MWI's motion.

Finally, RTC argues that the Commission has no state statutory authority to order interim relief in this context. RTC claims that "[t]he most familiar" statute authorizing interim approval of rates is § 69-3-304, MCA, and that statute does not apply to this filing, which involves initial rates offered for the first time. RTC reply brief, p. 5. The Commission finds that it has sufficient authority under its general powers to order interim relief in a variety of contexts. § 69-3-102, MCA. Further, § 69-3-810(1), MCA, allows the "interim introduction of the service pending a hearing," and, contrary to RTC, this interim introduction is not limited to the rates and conditions proposed by an applicant.

None of RTC's arguments persuade the Commission that it is either unlawful or unwise to order interim bill-and-keep with a true-up. The Telecommunications Act of 1996 mandates that reciprocal compensation arrangements be made available by LECs to interconnecting carriers. At some point excessive delay in providing such arrangements makes the promises of the Act hollow. A true-up mechanism should make RTC relatively indifferent to interim bill-and-keep. Traffic flow will be monitored during the interim period; if at the end of that period the traffic is out of balance in the direction RTC predicts, then RTC will be compensated based on the reciprocal compensation rate determined in this docket. If the flow is the opposite of that which RTC predicts, then MWI will be compensated. If the flow is in rough balance, then no compensation will be necessary.

Conclusions of Law

1. Ronan Telephone Company is a public utility subject to the jurisdiction of the Montana Public Service Commission. §§ 69-3-101(f) and 69-3-102, MCA.

2. Ronan Telephone Company has a duty to establish reciprocal compensation arrangements with telecommunications carriers who request them. 47 U.S.C. § 251(b)(5), § 69-3-834(2)(b), MCA.

3. The Montana Public Service Commission has the authority to order Ronan Telephone Company to provide interim bill-and-keep reciprocal compensation, with a true-up mechanism, to requesting carriers, pending hearing and final decision on Ronan Telephone Company's reciprocal compensation tariff filing. § 69-3-102 and 69-3-810(1), MCA; 47 U.S.C. § 251(a)(5); 47 U.S.C. 252(d)(2); 47 C.F.R. §§ 51.701-717.

Order

The motion of Montana Wireless, Inc. for interim establishment of bill-and-keep reciprocal compensation is granted, subject to a true-up, based on the final Ronan Telephone Company reciprocal compensation rate, if transport and termination of traffic is not roughly in balance over the interim period.

DONE AND DATED this 23rd day of March, 2000, by a vote of 3 to 2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chair

NANCY MCCAFFREE, Vice Chair, dissenting

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner, dissenting

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.